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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EVELYN SABBAG, Derivatively on Behalf of) Case No.: 10-cv-002735-JF-HRL
11 AKEENA SOLAR, INC.,)

12 || Plaintiff,

13 || v.

14 BARRY CINNAMON, GARY EFFREN,
15 EDWARD ROFFMAN, JON WITKIN, GEORGE
LAURO, and DAVID WALLACE,

16 || Defendants,

-and-

AKEENA SOLAR, INC., a Delaware corporation.

Nominal Defendant.

**PLAINTIFFS' RESPONSE TO
ADMINISTRATIVE MOTION BY
MOVANT JOHN R. KLEIN TO
CONSIDER WHETHER CASES
SHOULD BE RELATED
PURSUANT TO CIVIL LOCAL
RULE 3-12 AND OBJECTION TO
THE STIPULATION
CONSOLIDATING ACTIONS,
APPOINTING LEAD COUNSEL,
AND RELATED MATTERS AND
[PROPOSED] ORDER THEREON**

[Caption continued on following page]

27 PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION BY MOVANT JOHN R. KLEIN TO CONSIDER
28 WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12 & OBJECTION TO
STIPULATION CONSOLIDATING ACTIONS, APPOINTING LEAD COUNSEL, AND RELATED MATTERS
AND [PROPOSED] ORDER THEREON

<p>1 VINCENT F. CILURZO and AUDREY T.) 2 CILURZO, Derivatively on Behalf of AKEENA) SOLAR, INC.,) 3 Plaintiffs,) 4 v.) 5 BARRY CINNAMON, EDWARD ROFFMAN,) 6 GARY EFFREN, GEORGE LAURO, DAVID) WALLACE, and JON WITKIN,) 7 Defendants,) -and-) 8 AKEENA SOLAR, INC., a Delaware corporation,) 9 Nominal Defendant.)</p> <hr/> <p>10 DONALD A. TRISKETT, Derivatively on Behalf) Case No.: 10-cv-02992-JF 11 of AKEENA SOLAR, INC.,) 12 Plaintiff,) 13 v.) 14 BARRY CINNAMON, GARY EFFREN,) 15 EDWARD ROFFMAN, and JON WITKIN,) Defendants,) -and-) 16 AKEENA SOLAR, INC., a Delaware corporation,) 17 Nominal Defendant.)</p> <hr/> <p>18 DANIEL JAQUEZ, Derivatively on Behalf of) Case No.: 10-cv-03020-JF 19 AKEENA SOLAR, INC.,) 20 Plaintiff,) 21 v.) 22 BARRY CINNAMON, PRADEEP JOTWANI,) 23 ED ROFFMAN, JON MATHEW WITKIN,) GARY EFFREN, and DOES 1-20,) Defendants,) -and-) 25 AKEENA SOLAR, INC., a Delaware corporation,) 26 Nominal Defendant.)</p> <hr/> <p>27 PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION BY MOVANT JOHN R. KLEIN TO CONSIDER) 28 WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12 & OBJECTION TO) STIPULATION CONSOLIDATING ACTIONS, APPOINTING LEAD COUNSEL, AND RELATED MATTERS) AND [PROPOSED] ORDER THEREON) CASE NOS. 10-cv-02735-JF-HRL, 10-cv-02806-JF, 10-cv-02992-JF, 10-cv-0320-JF & 10-cv-03387-PVT)</p>	<p>Case No.: 10-cv-02806-JF</p>
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1 JOHN R. KLEIN, Derivatively on Behalf of) Case No.: 10-cv-03387-PVT
2 AKEENA SOLAR, INC.,)
3 v.)
4 BARRY CINNAMON, GARY EFFREN,)
5 EDWARD ROFFMAN, and JON WITKIN,)
6 -and-)
7 AKEENA SOLAR, INC.,)
8 Nominal Defendant.)
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27 PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION BY MOVANT JOHN R. KLEIN TO CONSIDER
28 WHETHER CASES SHOULD BE RELATED PURSUANT TO CIVIL LOCAL RULE 3-12 & OBJECTION TO
STIPULATION CONSOLIDATING ACTIONS, APPOINTING LEAD COUNSEL, AND RELATED MATTERS
AND [PROPOSED] ORDER THEREON
CASE NOS. 10-cv-02735-JF-HRL, 10-cv-02806-JF, 10-cv-02992-JF, 10-cv-0320-JF & 10-cv-03387-PVT

1 Plaintiffs Evelyn Sabbag, Vincent F. Cilurzo, Audrey T. Cilurzo, Donald A. Triskett, and
 2 Daniel Jaquez, (collectively "Plaintiffs") by and through their counsel, submit this Response to
 3 Administrative Motion by Movant John R. Klein ("Movant") to Consider Whether Cases Should
 4 Be Related Pursuant to the Civil Local Rule 3-12 and Objection to the Stipulation Consolidating
 5 Actions, Appointing Lead Counsel, and Related Matters and [Proposed] Order Thereon (the
 6 "Motion").

7 Plaintiffs support John R. Klein's ("Klein") request to the extent that it seeks to relate
 8 *Klein v. Cinnamon, et al.*, Case No. 10-CV-03387-PVT to the above-captioned derivative actions
 9 (the "Present Actions") (which this Court deemed related on July 22, 2010), and reassign *Klein*
 10 to this Court pursuant to Local Rule 3-12(f)(3).

11 Plaintiffs, however, reject Klein's argument that this Court should decline to sign and
 12 enter the Stipulation Consolidating Actions, Appointing Lead Counsel, and Related Matters and
 13 [Proposed] Order Thereon (the "Stipulation"), which was filed by the parties in the Present
 14 Actions on July 30, 2010. The Stipulation requests that the Present Actions be consolidated, sets
 15 forth a leadership structure, and proposes a schedule for the filing of Plaintiffs' consolidated
 16 complaint and the briefing on defendants' anticipated motion to dismiss and motion to stay.
 17 Klein's argument that the Stipulation should be denied is based entirely on his assertion that he
 18 should be given an opportunity to meet and confer with the parties in the Present Actions prior to
 19 the Court entering the Stipulation. First, the *Klein* action, which alleges strikingly similar
 20 allegations to those in the Present Actions that have been pending since June 22, 2010, was not
 21 filed until August 2, 2010 – after the parties in the Present Actions met and conferred, signed,
 22 and filed the Stipulation.

23 Second, the counsel for Plaintiffs in the Present Actions have met and conferred with
 24 Klein's counsel concerning the subjects of the Stipulation, but an agreement has not been
 25 reached. The parties' good-faith efforts to coordinate with each other and promote the efficient

1 litigation of this derivative action should not be disturbed by a plaintiff that took much longer to
2 file a substantially similar complaint and whose request to deny entry of the proposed Stipulation
3 would cause unnecessary delay. Plaintiffs stand ready to honor the Stipulation by filing a
4 consolidated complaint by tomorrow, Friday, August 6. The Stipulation should be granted
5 because four of the five plaintiffs (every plaintiff except Klein), support the proposed Stipulation
6 and leadership structure.

7 Accordingly, Plaintiffs respectfully request that the Court deem *Klein* related to the
8 Present Actions, reassign *Klein* to this Court, and grant the Stipulation.

9 DATED: August 5, 2010

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17 DATED: August 5, 2010

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Attorneys for Plaintiffs Vincent F. Cilurzo and
Audrey T. Cilurzo

DATED: August 5, 2010

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1 I, George C. Aguilar, am the ECF User whose ID and password are being used to file
2 Plaintiffs' Statement in Support of Administrative Motion to Consider Whether Cases Should be
3 Related Pursuant to Local Rule 3-12. In compliance with General Order No. 45, X.B., I hereby
4 attest that Michael Goldberg, Travis E. Downs III, and Francis A. Bottini, Jr. have concurred in
5 this filing.

6 _____
7 s/George C. Aguilar
GEORGE C. AGUILAR

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27 PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION BY MOVANT JOHN R. KLEIN TO CONSIDER
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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the Electronic Mail Notice List. I hereby certify that I have sent notification and served a copy of the filing via electronic mail and/or U.S. Mail to the following parties listed below:

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1 **VIA U.S. MAIL**

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5 I certify under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct. Executed on August 5, 2010.

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8 s/George C. Aguilar
9 GEORGE C. AGUILAR

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PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION BY MOVANT JOHN R. KLEIN TO CONSIDER
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